

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
\_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:TEGE:EB:QP3  
PLR-137976-15

Date:  
May 10, 2016

Taxpayer A =  
Decedent B =  
Trust C =  
Custodian D =  
IRA E =  
IRA F =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
State G =

Dear \_\_\_\_\_:

This letter responds to your request dated September 24, 2015, as supplemented by correspondence dated November 12, 2015, submitted on your behalf by your authorized representative, in which you request a series of rulings under section 408(d) of the Internal Revenue Code ("Code").

The following facts and representations were submitted under penalty of perjury on your behalf:

Decedent B and Taxpayer A (husband and wife) established Trust C on Date 1 under the laws of State G. Trust C was subsequently amended and restated in its entirety on Date 2. Decedent B died on Date 3. All assets held by Trust C consisted entirely of Taxpayer A's and Decedent B's community property.

Upon Decedent B's death, Taxpayer A became the sole trustee of Trust C. Decedent B owned IRA E and IRA F at the time of his death. It is represented that each of the IRAs was a valid IRA under section 408(a). Decedent B was born on Date 4, and had reached his required beginning date with respect to both IRAs on Date 5. At the time of Decedent B's death, Decedent B was receiving minimum distributions from the IRAs.

At the time of Decedent B's death, both IRAs were held by Custodian D. Upon Decedent B's death, in accordance with the beneficiary designation for each IRA, both IRAs passed to Trust C.

Upon Decedent B's death, in accordance with the terms of Trust C, Trust C split into two sub-trusts, the Survivor's Trust and the Exemption Trust.

Taxpayer A, as sole Trustee of Trust C, under both the terms of Trust C and under State G law, had sole authority to determine which Trust C assets were to be allocated to the Survivor's Trust and to the Exemption Trust. Accordingly, Taxpayer A allocated IRA E and IRA F to the Survivor's Trust (and allocated other assets to the Exemption Trust). In addition, Taxpayer A, as sole Trustee of Trust C combined IRA E and IRA F into a single IRA (as combined, Decedent B's IRA).

Under the terms of the Survivor's Trust, Taxpayer A, as sole beneficiary, is entitled to receive all of the income and principal of the Survivor's Trust (to which Decedent B's IRA was allocated), as Taxpayer A has the right to direct the trustee in writing to pay to Taxpayer A or apply for Taxpayer A's benefit such amounts from or portions of the principal of the Survivor's trust, up to the entire amount of the trust, as Taxpayer A may designate.

Under the terms of the Exemption Trust, Taxpayer A may receive the income of the Exemption Trust in the Trustee's discretion (i.e., Taxpayer A's discretion) and the principal of the Exemption Trust in the Trustee's discretion for Taxpayer A's proper health, support, and maintenance in accordance with the standard of living that Taxpayer A enjoyed on the date of Decedent B's death.

Taxpayer A as sole Trustee and sole beneficiary of the Survivor's Trust intends to set up and maintain an IRA in her name, to take distribution of the entirety of Decedent B's IRA, and to roll over the distribution (other than those amounts required to have been distributed or to be distributed from Decedent B's IRA during the period beginning with the calendar year 2009 and ending with the calendar year of the roll over) to the custodian of Taxpayer A's IRA, pursuant to section 408(d)(3) (the Spousal Rollover Transaction). The assets distributed and rolled over during the Spousal Rollover Transaction are referred to as the Spousal Rollover Balance.

Based on the preceding facts, Taxpayer A requests the following rulings:

1. That Decedent B's IRA is not an inherited IRA for purposes of section 408(d)(3) with respect to Taxpayer A.
2. That Taxpayer A will be treated as the payee or distributee of Decedent B's IRA with respect to the Spousal Rollover Balance following the Spousal Rollover Transaction.
3. That Taxpayer A will be eligible to roll over the Spousal Rollover Balance into an IRA established and maintained in Taxpayer A's name following the Spousal Rollover Transaction, pursuant to section 408(d)(3).
4. That Taxpayer A will not be required to include the Spousal Rollover Balance in her gross income for federal income tax purposes for the year in which the Spousal Rollover Balance is distributed to the custodian of Taxpayer A's IRA and rolled over into Taxpayer A's IRA following the Spousal Rollover Transaction, pursuant to section 408(d)(3).
5. That beginning with the year following the year in which the Spousal Rollover Transaction occurs, minimum required distributions from Taxpayer A's IRA will be calculated in accordance with section 401(a)(9)(A) with Taxpayer A as the IRA owner.

With respect to your ruling requests, section 408(d)(1) provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of section 408(d)(3)(A) and (d)(3)(B).

Section 408(d)(3)(A) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if: (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which he receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at the time

during the one-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in his gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from gross income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual.

Section 1.408-8 of the Income Tax Regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from a deceased spouse's IRA is permitted to roll that distribution over into his or her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60-day period.

Generally, if the proceeds of a decedent's IRA pass through a third party, e.g. a trust or an estate, and then are distributed to the decedent's surviving spouse, the surviving spouse shall be treated as having received the IRA proceeds from the third party and not from the decedent. Thus, generally a surviving spouse shall not be eligible to roll over the distributed IRA proceeds into his or her own IRA. However, the general rule will not apply in a case where the IRA has not yet been distributed and the surviving spouse as Trustee of the trust has sole authority and discretion to pay the IRA proceeds to him or her. In such a case, when the surviving spouse actually receives the IRA proceeds, the surviving spouse may roll over the amounts into an IRA set up and maintained in his or her name within 60 days.

In the present case, Decedent B's IRA E and IRA F passed to Trust C. Taxpayer A, as sole Trustee of Trust C, under both the terms of Trust C and under State G law, had sole authority to determine which Trust C assets were to be allocated to each of the sub-trusts (the Survivor's Trust and the Exemption Trust). Accordingly, Taxpayer A

allocated IRA E and IRA F to the Survivor's Trust (and allocated other assets to the Exemption Trust). In addition, Taxpayer A, as sole Trustee of Trust C combined IRA E and IRA F into a single IRA (as combined, Decedent B's IRA).

Under the terms of the Survivor's Trust, Taxpayer A, as sole beneficiary, is entitled to receive all of the income and principal of the Survivor's Trust (to which Decedent B's IRA was allocated), as Taxpayer A has the right to direct the trustee in writing to pay to Taxpayer A or apply for Taxpayer A's benefit such amounts from or portions of the principal of the Survivor's trust, up to the entire amount of the trust, as Taxpayer A may designate.

Under this set of circumstances, no third party can prevent Taxpayer A from receiving a distribution of the proceeds of Decedent B's IRA and from rolling over the amount (other than those required minimum distribution amounts required to have been distributed or to be distributed in accordance with section 401(a)(9) from Decedent B's IRA during the period beginning with the calendar year of Date 3 and ending with the calendar year of the roll over) into another IRA set up and maintained in the name of Taxpayer A. In addition, beginning with the year following the year in which the Spousal Rollover Transaction occurs, the required minimum distributions from Taxpayer A's IRA will be calculated in accordance with section 401(a)(9) with Taxpayer A as the IRA owner.

Therefore, with respect to your ruling requests we conclude:

1. That Decedent B's IRA is not an inherited IRA for purposes of section 408(d)(3) with respect to Taxpayer A.
2. That Taxpayer A will be treated as the payee or distributee of Decedent B's IRA with respect to the Spousal Rollover Balance following the Spousal Rollover Transaction.
3. That Taxpayer A will be eligible to roll over the Spousal Rollover Balance into an IRA established and maintained in Taxpayer A's name following the Spousal Rollover Transaction, pursuant to section 408(d)(3).
4. That Taxpayer A will not be required to include the Spousal Rollover Balance in her gross income for federal income tax purposes for the year in which the Spousal Rollover Balance is distributed to the custodian of Taxpayer A's IRA and rolled over into Taxpayer A's IRA following the Spousal Rollover Transaction, pursuant to section 408(d)(3).
5. That beginning with the year following the year in which the Spousal Rollover Transaction occurs, minimum required distributions from Taxpayer A's IRA will be calculated in accordance with section 401(a)(9)(A) with Taxpayer A as the IRA owner.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

John T. Ricotta  
Chief, Qualified Plans Branch 3  
Tax Exempt & Government Entities

cc: